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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 958

M. MEADS
Petitioner

VS.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

M. MEADS
P. O. Box 1094
Manila, Philippines
In His Own Behalf

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IN THE

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OCTOBER TERM, 1957

No. ....

M. MEADS
Petitioner

VS.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

M. MEADS, in his own behalf, prays that a writ of certiorari be issued to review the judgment of the United States Court of Claims overruling the Motion for Summary Judgment of the above entitled petitioner in the above-entitled cause, entered December 4, 1957.

OPINIONS BELOW

The action of the Court of Claims is based upon its Opinions in Schawazenberg V. United States, 60 C. Cls. 898, 902; Srere Brothers & Co. v. United States, 60 C. Cls. 994, 998; Hummell, Trustee v. United States, 59 C. Cls. 489, 493 which the petitioner declares as inapplicable to the case at bar, this cause having no precedent in law, contract or facts, being rooted in Veteran's Rights.

JURISDICTION

The right to sue in the United States Court of Claims is found in section 1491 of the Judicial Code; Tit. 28 USCA, 1491.

The judgment of the United States Court of Claims was entered on December 4, 1957. Application to the said Court for a Transcript of the Record was filed.

STATUTES

The statutes involved will be found in Appendix C.

STATEMENT

The facts are as follows:

(1) Petitioner is of legal age, a citizen of the United States a resident of the Republic of the

Philippines with Postal Address at P. O. Box 1094, Manila, Philippines.

(2) In 1944 the Legislature of the United States passed a law that is entitled the "Surplus Property Act of 1944" to provide for the disposal of all the property accumulated by the United States Government for the prosecution of World War II. except armaments, which property was called Surplus Property. The quantity of this property has been estimated to be over forty billion dollars. practically all having commercial utility. In the Surplus Property Act of 1944, a special provision was made to grant priority to Veterans of World War II in the purchase of said surplus property as a token of gratitude respect for the servicemen's part in defending the United States of America and/or because there was simply such a gigantic tremendous lot of property that the government would be stuck with that the lawmakers included a sop to Veterans purely for public relations purposes and/or to enhance the morale of the servicemen at a time when hostilities were at its apogee.

(3) Believing in the sincerity and genuineness of this law, the petitioner planned during the remainder of World War II to use his Veterans'

Priority under the Surplus Property Act of 1944 to purchase equipment to establish a business as a private enterpriser and to also provide self-employment. To this end, the petitioner, relying upon the good faith of his government, The United States, sacrificed his Civil Service Status in the Navy Department of his government, considerable seniority, and the safe and comfortable socialist atmosphere of government bureaucracy to follow a course of a businessman inspired by Petitioner's Veteran's Priority under the Surplus Property Act of 1944.

(4) Pursuant to the authority and the mandatory character of the Surplus Property Act of 1944, on August 13, 1946, Petitioner-Veteran and the United States, through its agent The United States Foreign Liquidation Commission, entered into Contract W-ANL(PA-I)6758 selling ONE sawmill described in the contract "Sawmill, portable, GED 4' x 7' HD, make and model unspecified" from the surplus property of World War II of the United States on an "as is" "where is" basis F.O.B. Shipping Point, Base X. The Petitioner paid for the property sold to him in full, and Vendor's Shipping Document, Invoice No. 7496 was issued accordingly. The United States Foreign Liquidation Commission and the Petitioner

executed Contract W-ANL(PA-I) 6758 which execution is admitted by The United States. The United States Foreign Liquidation Commission delivered the subject contract to the Petitioner after its execution in accordance with Contract Article No. Three which is admitted by The United States. Title, with warranty therefore passed from the United States to the Petitioner in accordance with Article Three of Contract W-ANL(PA-I)6758.

(5) Delivery of the sawmill sold to the Petitioner-Veteran by The United States was made concurrently and automatically, by operation of contract, with the full payment and the transfer of the title to the Petitioner because the sawmill was sold "AS is" "where is" and or because of the acknowledgment of delivery by both the Petitioner and The United States on VSD, Appendix 3, before the United States Army took the sawmill from the Petitioner during the loading of the sawmill after legal contractual, actual and physical and effective delivery of the sawmill had been made by The United States to the Petitioner and or delivery of the sawmill was never made as required by the aforesaid contract. The United States took Petitioner's sawmill after the consummation of Contract W-ANL(PA-I)6758 and

after the Petitioner and The United States had signed the Vendor's Shipping Document acknowledging the completion of delivery and by withholding it from the Petitioner thereafter and or failed to deliver the sawmill sold under and as required by Contract W-ANL(PA-I)6758.

(6) All the conditions of Contract W-ANL(PA-I)6758 have been complied with by the Petitioner and this is not denied or disputed by the United States.

(7) Even after the Petitioner's sawmill was taken by The United States and or the United States failed to deliver on the subject contract, The United States considered Contract W-ANL (PA-I)6758 a subsisting contract and waived any and all rights, imaginary or otherwise, that it might have had to cancel the contract or refuse delivery (although no such rights existed), Appendix J.

(8) Whether or not the United States sold specified goods capable of immediate delivery or unspecified goods capable both of immediate or future delivery with potential existence in the forty billion dollars of Surplus Property, the all encompassing factor of Veterans' Priority under the Surplus Property Act of 1944 created an absolute and

perpetual contract by operation of law between the Petitioner and the United States with respect to all property, all sawmills in the Surplus Property of World War II which The United States was bound by law to make available to the Petitioner. Contract W-ANL(PA-I)6758 is concrete evidence of the implementation of Veterans' Priority under Appendix C and is supererogatory evidence of Petitioner's claim to that priority and The United States' acknowledgment of its legal obligation and of the existence of the sawmill sold to petitioner and/or all sawmills covered by Petitioner's Veterans' Priority.

(9) The Petitioner made many demands upon The United States to return his sawmill and/or to make delivery on Contract W-ANL(PA-I)6758, but in spite of the hundreds of sawmills in the Surplus Property of World War II, and Petitioner's Veterans' Priority, and his standing Contract, and the complete lack of War, or the possibility of War, or of stress or emergency. The United States did not comply with Petitioner's requests.

(10) The United States, instead of complying with the law, Surplus Property Act of 1944, in a manner and an intensity that the law clearly

demands, sold surplus property, much in demand by veterans, to aliens, Chinese businessmen with a peculiar fraternity for U. S. Foreign Liquidation Commission employees, and finally gave ninety percent of all the surplus property in the Philippines, including all the sawmills, free of charge, to a foreign government without any legal authorization, whatsoever and in gross contravention of the Surplus Property Act of 1944. But if this isn't rotten enough, The United States did this while the Petitioner was constantly demanding fulfillment of his Veterans' Rights and even while the Petitioner had an executed contract awaiting fulfillment by the United States. And so while The United States had taken Petitioner's sawmill and or refused to deliver one to him on Contract W-ANL(PA-I)6758, it was giving to a foreign government without charge and without sanction of law, enough sawmills to fulfill Contract W-ANL(PA-I)6758 a hundred times over. But if this isn't dirty enough, The United States Foreign Liquidation Commission set up this arrangement with the Philippine government ostensibly to simplify the sale of surplus property, but in reality circumvented the provisions of the law in regard to Veterans and made it impossible for any American in the Philippines to purchase surplus prop-

erty and even prevented the American taxpayer from getting some return on the U. S. government property remaining in the Pacific after the war. Did this mean that operations of the U.S. Foreign Liquidation Commission were simplified or bettered. Definitely not. They were only altered. Thereafter, and even before, the Philippine Surplus Property Commission, receiving all the American Surplus Property free of charge, would write a letter to the U. S. Foreign Liquidation Commission telling the United States to deliver to certain Filipino citizens such and such property. The U. S. Foreign Liquidation Commission would then send the Vendor's Shipping Document to the Philippine Surplus Property Commission and deliver the property from its depots to the Filipinos. All the responsibility, expenses, losses and problems were still exclusively American, but the socialist minded retirement obsessed American bureaucrats had given up all the authority over surplus property which effectively and thoroughly defrauded American citizens, Veterans and the American taxpayer. The net result was that while the Petitioner had Veterans' Priority both by law and an executed contract which placed the United States as a double debtor to the Petitioner, the United States was giving sawmills in quantity to the Phil-

ippine government and its Philippine Surplus Property Commission who were immediately and simultaneously selling the sawmills to Filipinos. All this fraud and sabotage of American free enterprise because of cowardly, parasitic socialist mentality that has taken over the American bureaucracy. All in contravention of the intent of the U. S. legislature in the Surplus Property Act of 1944 and all its legislation since the beginning of the United States of America.

(11) The Petitioner filed his claim with the General Accounting Office of the United States, after it was denied by the U. S. State Department, but, having received no final adjudication was compelled to proceed in the U. S. Court of Claims to preclude the prescription of his Claim. The Petitioner's claim was filed in the U. S. Court of Claims before August 13, 1952. By order signed by Chief Justice Warren on February 4, 1958, petitioner was granted an extension of time to file petition for Writ of Certiorari to May 3, 1958.

(12) The Petitioner has asked for damages as follows:

> "return of plaintiff's sawmill and/or specific performance of the aforesaid contract; $4,216.-$52.25 as just compensation for the use of

plaintiff's sawmill, or for damages, from September 1, 1946 to July 31, 1952; just compensation, or damages, at the same rate from August 1, 1952 until judgment; or in the alternative for $3,020,050.00 as rental for the sawmill, or reimbursement for damages, from September 1, 1946 to July 31, 1952; rentals, or damages, at the same rate from August 1, 1952 to judgment; interest at the rate of six percent per annum on the total amount of the award; $1,825,000.00 as special damages; treble damages; right to submit additional claims until judgment is rendered; costs to the defendant; and other relief that is just, equitable and legal in the premises."

(13) No compensation has been paid to the Petitioner because of the taking of his property and or the failure of the United States to make delivery to him on Contract W-ANL(PA-I)6758 and no part of the damages cited in stipulation No. (12) above has been paid.

(14) There has been no assignment or transfer of this claim or any part thereof. There are no credits or set offs thereto.

(15) The United States Court of Claims on December 4, 1957 overruled the Petitioner's Motion

for Summary Judgment, which was confined solely to the issue of liability, with the invitation to renew the Motion for Summary Judgment submitting additional evidence of the availability of a sawmill at the time Contract W-ANL(PA-I)6758 was executed.

(16) In the order cited in stipulation (15) above, the Court of Claims included therein statements, conclusions, references and formal declarations as to what damages could be awarded and how they would be ascertained even though the Petitioner's Motion for Summary Judgment was confined strictly and exclusively to the matter of 'liability' and therefore he did not plead the matter of damages in any way shape or form.

(17) The United States has made no statement under oath or submitted any evidence constituting personal knowledge whatsoever to the effect that the sawmill sold under Contract W-ANL(PA-I) 6758 did not physically exist at the time Contract W-ANL(PA-I)6758 was executed or that no such sawmill equipment ever existed after Contract W-ANL(PA-I) 6758 was executed. Whereas the Petitioner has submitted affidavits of eye witnesses, as well as other evidence, of individuals with personal knowledge of facts and conditions in regard to this matter.

(13) In the first place no such evidence is necessary because the United States is still bound to the Petitioner by the Veterans' Rights of the Surplus Property Act of 1944 and which specifies that in the event there is any doubt on any matter pertaining to surplus property, the presence of an executed contract, with payment fully made, and contract delivered to the purchaser is "conclusive evidence that all the requirements of the Surplus Property Act of 1944 have been complied with". Therefore, whether there is true doubt as to any fact, such fact is verified and authenticated and testified to by operation of law (Surplus Property Act of 1944) providing a contract or instrument conveying title has been executed, and delivered to the purchaser, thus transfering title to property, as in the cause at bar. Further, the United States is obligated to perform Contract W-ANL(PA-I)6758 at any time, especially if the Veteran-Purchaser is willing to allow the United States to deliver out of time, without prejudice to any damages that the Veteran-Purchaser may have sustained by reason of the delay in delivery. Further, The United States never set up a defense of impossibility or claim of non-availability of sawmill in its answer to Petitioner's Petition in the Court of Claims, thus waiving such allegible de-

fenses (though unwarranted, untrue, and unjustified) under the Rules of the United States Court of Claims.

SPECIFICATIONS OF ERRORS TO BE URGED

The United States Court of Claims erred:

(1) In discussing, bringing into and entering opinion in its decision, issued pursuant to Petitioner's Motion For Summary Judgment which was confined solely to the issue of establishing liability, the issue of damages, their extent and measurement thereof, which question or issue was not raised, pleaded in any way shape or form in said motion for summary judgment; and/or in declaring that the measure of damage would be the market value of the sawmill at the time of default by Government over the sales price to Petitioner instead of the rental value or the profit that Veteran-Petitioner would have earned from the operation of the sawmill in his Veteran's business as required by the Surplus Property Act of 1944 and Stipulation Eleven of Contract W-ANL (PA-I)6758.

(2) In decreeing that Contract W-ANL(PA-I) 6758 is not a subsisting contract and/or a continuing contract with respect to the obligation of the United States to deliver on that contract from

the entire surplus property of World War II, and particularly in the Philippines or Pacific, if the Veteran-Purchaser is willing to accept delayed delivery.

(3) In failing to rule that the Veteran's Priority of M. Meads both under the Surplus Property Act of 1944 and under Contract W-ANL(PA-I) 6758 entitles him to delivery of a sawmill from the United States from the surplus war property of World War II, even after the original default on delivery on Contract W-ANL(PA-I)6758 by the United States.

(4) In failing to rule that the Veterans' Priority of M. Meads both under the Surplus Property Act of 1944 and under Contract W-ANL(PA-I) 6758 automatically prohibits the sale or transfer of a sawmill to any other party, with priority or without priority, the U. S. Government or the Philippine Government until delivery on the executed Contract W-ANL(PA-I)6758 has been fulfilled by the U. S. government and the provisions of the Surplus Property Act of 1944 with respect to Veterans' Priority have been fully satisfied.

(5) In failing to rule that Section 25 of Surplus Property Act of 1944 automatically proves by operation of law that a sawmill capable of delivery

under Contract W-ANL(PA-I)6758 did exist at the time of the execution of said Contract regardless of other considerations, but particularly, especially, and absolutely so in a case where the U. S. Court of Claims declares a doubt, as it did in the case at bar.

(6) In failing to rule that the United States is estopped from pleading non-existence of property having waived such defense by failing to set-it up in its answer to Petitioner's Complaint at bar or at any time thereafter in accordance with the Rules of the U. S. Court of Claims.

(7) In failing to rule that the United States prevented its own performance of Contract W-ANL(PA-I)6758 by turning over all the U. S. surplus property in the Philippines free of charge to the Philippine government without the authority of law, and without first satisfying the provision of the Surplus Property Act of 1944 giving priority to Veterans of World War II, and doing so before an outstanding Contract W-ANL (PA-I)6758 with a veteran has been fulfilled.

(8) In failing to sustain prior Supreme court decisions i.e. those decisions enunciating that the meaning of the 'more or less' clause 'or approximately' clause in government contracts allows

for only small or minor inaccuracies in counting and does not allow for the voiding or cancellation of entire contracts.

(9) In failing to rule a Federal contract subject of a quantity of only ONE repeat ONE sawmill is an irreducible minimum and does not allow of cancellation on a Veterans' Priority-Negotiated Sale with delivery to be made from forty billion dollars worth of World War II surplus property that contains innumerable sawmills subject to Veterans' Priority under the Surplus Property Act of 1944.

(10) In ruling that the Contract W-ANL(PA-I) 6758 was a typewritten contract in spite of the presence of an affidavit indicating that it was mimeographed and dittoed with only the amount and subject of the sale typewritten and in spite of the fact that the opposing party has likewise never made any written allegation whatsoever to the effect that the contract W-ANL(PA-I) 6758 was typewritten.

(11) In failing to rule that the property sold either existed at the time of the execution of Contract W-ANL(PA-I)6758, and/or that it was unspecified property capable of existence' under petitioner's Veterans' Priority provided by Surplus Property Act of 1944 and Contract W-ANL (PA-I)

6758 which provide priority to veterans of World War II in the disposal of all sawmills within surplus property.

(12) In failing to rule that legal delivery of a sawmill under Contract W-ANL(PA-I)6758 had been made by the United States to petitioner as evidenced by the signatures of the petitioner and the Surplus Property Officer of the U. S. Armed Forces on the Vendor's Shipping Document, appendix B, which is an integral part of Contract W-ANL(PA-I)6758 (and which receipt of delivery of sawmill was signed when M. Meads accepted delivery of a sawmill under Contract W-ANL(PA-I)6758 from the United States but subsequently had it taken from him by the U. S. Army) and that this therefore constituted a taking of property from M. Meads when the U. S. dispossessed him, after acknowledging delivery to him in accordance with contract, in contravention of the Constitution.

(13) In failing to rule that Veterans' Priority under Surplus Property Act of 1944 in effect grants to veterans of World War II a perpetual contract with the United States government over all surplus property of World War II and or that the obligation of the United States government to a

veteran or veterans begins even before a contract is executed with that veteran or veterans.

(14) In holding that the United States claimed that the three sawmills had been disposed of before plaintiff's contract was entered into when in fact the United States has never made any such statement either in its answer to Plaintiff's Petition or in any other written proceeding before the U.S. Court of Claims, and which is contrary to the statement of the United States, Appendix F.

(15) In holding that the case at bar is in the same class as Schwarsenberg and Srere Brothers and Hummell Trustee and thus ignoring the fundamental difference between a Negotiated-Veteran's-Priority Sale from forty billion dollars worth of surplus property of World War II (mandatory under Federal Law) and the uninhibited, unspecialized, non-particularized dealings in the sale of any excess U.S. government property to the public in general by bidding or other competitive and mass-participation procedures.

(16) In accenting its opinion with a discourse on the legal principle of "stare decisis," which was never an issue in the case at bar nor disputed, and in mis-applying it to attempt to create a relationship between the case at bar and other decisions.

none of which have anything in common either on the basic legal or contractual side of the subject issue.

(17) In accepting, tolerating, entertaining falsified and/or misrepresented documents submitted in a misrepresentative and deceptive manner for the purpose of defeating petitioner's complaint by any means at any cost as long as another notch can be placed on the gun of the eager beaver Department of Justice whose methods stigmatizes it as entity that is light years away from learning what justice is and means between 'government' and 'citizenry' and 'government' and publican.'

(18) In declaring that the petitioner is limited to obtaining a sawmill from those actually being offered for sale at the execution of the subject contract when in fact the declared policy of the United States is that delivery shall be made from all the surplus war property existing on or before the date of the contract, but not from that property newly purchased by the owning agency after that date. Appendix M.

(19) In failing to declare estoppel against the United States after it had indicated that subject contract is a subsisting and perpetually binding one, Appendix J.

REASONS FOR GRANTING THE WRIT

I. The decision of the Court of Claims is in conflict with decisions of other Federal Courts, including the Supreme Court involving the basic question of Federal Contract interpretation.

The Court of Claims bases its decision upon the following cases: Schwazenberg v. U.S., 60 C. Cls. 989, 902; Srere Brothers & Co. v. U.S., 60 C. Cls. 994, 998; Hummel Trustee v. U.S., 58 C. Cls. 489, 493. However, these cases have nothing in common with the case at bar except that they all involve the sale of property by the Government, but there the similarity ends. The facts and circumstances of the case at bar are completely different. The case at bar involves a negotiated sale, not a result of public bidding: it involves a sale controlled and compelled by law: it involves a sale to a veteran of World War II with legal rights as a veteran capable of supporting mandamus against the US to sell and deliver to him that which it is selling and delivering to others who do not have equivalent legal rights; it involves a sale of unspecified goods capable of immediate delivery as well as potential existence in the billions of dollars of government property remaining after World War II among which were hundreds of sawmills; it involves a sale in which the United States acknowledges an open and subsist-

ing and prevailing contract after it took my sawmill and or failed to perform contract W-ANL (PA-I)6758; it involves a sale wherein the United States further acknowledged that it could deliver a sawmill (delayed delivery) out of the remaining surplus property of World War II; a sale involving no attempt by the United States to cancel for over two years after default by the United States; a sale involving an item with a quantity of one, mathematically impossible of reduction without contract abrogation and therefore repudiation; a sale in which the United States waived any and all allegible defense, illusory or otherwise; a sale in which the la ., SPA 1944, estops the United States from cancellation or repudiation; a sale in which title passed to Veteran-buyer; a sale in which delivery was legally completed by the acknowledgment of delivery by both the Petitioner and the United States as exhibited by their signatures on VSD, appendix (B) which sawmill was subsequently repossessed by the United States.

Do the rules of US Court of Claims apply to and bind the United States or do they apply and bind only the parties joined in issue against the United States? Does the failure of the United

States to set forth and allege affirmative defenses in its responsive pleadings, particularly its answers to petitions, constitute a waiver as specified in the Rules of the United States Court of Claims, Appendix D?

Since the defense of the United States to petitioner's motion for Summary Judgment on the issue of liability is that of "non-availability of subject matter," which defense was waived in its answer, title cannot be passed to property that is impossible of existence, however, the fact that the United States admits the transfer of title to petitioner in its answer, stipulation eight (8) appendix N, this automatically constitutes an admission of the existence of the property to which title the United States admits transferring to petitioner. Does not such admission by the United States in its answer to petitioner estop it from claiming otherwise subsequently?

Does not the failure of the United States to set forth or establish or proffer any alleged defenses for its failure to perform Contract W-ANL (PA-I)6758 or its taking of petitioner's sawmill, immediately or within a reasonable time after the United States' default on Contract W-ANL (PA-I)6758, estop the United States from profesing such alleged defenses at a late date, years

later under the pressure of suit and claims for damages?

Does not the United States' treatment of Contract W-ANL(PA-I)6758 as an open, enforcible, subsisting and performable contract (Appendices F and J) automatically constitute a waiver of any and all defenses, illusory or otherwise?

In Sylvan Gravel Company v. United States 150 F. (2d) 642 (c.c.a. 2d), it was held that the United States Government, even under a contract giving it absolute and literal right to cancel, and quote "Cancellation by the Procurement Division may be effected at any time," was nevertheless obligated to give notice of cancellation in order to fulfill its obligation under that contract and that failure to notify was Breach of Contract. If the United States must give notice under such an absolute right and with the protection of such an unequivocable contract provision, then does not it also follow that it is legally required to give prompt notice of any discovery, or defense, or excuse, or opinion, or attitude, or claim of non-existence of subject matter, or not on hand condition, or impossibility, or non-availability, or mistake, or Article Eight Adjustment for variation in quantities within a reasonable time after its default on Contract W-ANL(PA-I)6758 especially before peti-

tioner files a claim of damages against it several years later (even though such defenses are untrue and unjustified).

In Branch Banking and Trust Company v. United States 98 F. Supp 757 (Ct. Cl. 1951) the Court of Claims added another case to the enforcement of estoppel against the Government, which cases provide an estoppel against the Government where the Government is acting in a proprietary or contractual capacity.

Is it legal for the United States, through one of its agencies, to act in a manner to prevent the performance of a contract executed by another of its agencies? Can the United States legally or morally sell an item of property to one person and then prevent its own performance of that contract by giving the property to another who has no legal right to the property? Is it legal for the United States, through is executive, to circumvent and prevent the performance and application of conditions and provisions made into law, i.e. Surplus Property Act of 1944, regarding Veteran's preference?

In Branson v. Writh, 17 Wall. 32 (U.S. 1873); and The Falcon, 19F. 2d 1009 (D.C. Cir. 1927), estoppel was also held against the government

when it was acting in a proprietary or contractual capacity, as in the case at bar. In the case at bar, no public property is being lost because petitioner has already paid for it. No national policy is being thwarted through misfeasance or nonfeasance of Government agents accept a national policy that favors the Petitioner as a Veteran-Purchaser. Nor was there any statutory limitation on government agency's authority, rather, on the contrary there was precise authoritative direction to act in a manner that would safeguard and benefit Veteran-Petitioner.

Other Federal Courts have ruled that the "Variation in Quantity" clauses in government contracts do not authorize total cancellation and repudation of contract and that such clauses refer to only slight and unimportant variations and do not allow for variations of 100%. American Jurisprudence Vol. 46. Sales 155 states the principle "As an absolute contract for a specific quantity within a reasonable limit"; and further states:

> "The Use of the phrase "more or less" in contracts or the sale of personal property, to qualify a statement of an absolute and definite amount, where there is no bad faith or fraud, precludes the statement of the amount from being a guarant, as to the amount if

there is a reasonable approximation to the quantity specifically named. Its effect is to permit the seller to fulfill his contract by a delivery of so much as may reasonably and fairly be held a compliance with the contract after making due allowance for excess or deficiency arising from the usual and ordinary causes which prevent an accurate estimate of the weight or number of the articles sold. or as it is sometimes briefly expressed, it is an absolute contract for a specific quantity within a reasonable limit."

"It has been held that the delivery and receipt of 4,634 tons of coal under a contract for the delivery and acceptance of "about 5,000 tons" does not so complete the contract as to entitle the buyer for that reason to refuse a tender of the remaining 366 tons."

The above was held in Moore v. United States 196 U.S. 157, 49 L. ed. 428 25 S.Ct. 202.

American Jurisprudence, Vol. 12, Contracts 257 states:

"x x x x if the agreement is to manufacture, furnish, or deliver certain property not than in existence, or to be taken from a larger quanti ty, the addition of the words "more or less" will be given a narrow construction and held to apply only to such accidental or immaterial variations in quantity as would naturally oc-

cur in connection with such a transaction. x x x x. Pine River Logging and Improvement Co. v. United States 186 U.S. 279, 46 L. ed. 1164, 22 S.Ct. 920, holding that contracts to cut and deliver a certain quantity of dead and down timber do not authorize the cutting of a large excess over the quantity mentioned, because of the use of the words "about" or "more or less" in designating such quantity."

Are we then to accept that these fundamental rulings and interpretations of the Supreme Court of the United States are now officially reversed by the United States Court of Claims?

II. The questions involved are of a substantial national importance, i.e. the legality of veteran's rights and preferences and their consequent reflection and effect on the national defense posture of the United States now and in the future.

In the event of grave national emergency again, what place and what need will there be for the creation of Veteran's priorities, privileges and rights if the veteran's rights and privileges of the Petitioner and the various aspects and considerations germane thereto are to be ignored, avoided and by-passed by the courts and the Executive Branch of the Government whenever it or they feel their personal interest is on the side of the public and or Government and group appreciation instead of the Veteran and or the Law and or precise Justice.

Veteran's priorities, preferences, privileges and rights created by Law develop special conditions before, during and after sales of War Surplus Property to Veterans that do not normally exist with respect to any and all other types of sales to other classes of buyers. But in the case at bar, the lower court has treated the Veteran's Priority-Negotiated-Sales Contract of the Petitioner and the subject purposes, motives and surrounding conditions of that contract as commonplace and identical to a purchase or a bidding by a non-veteran. Different laws create different conditions and therefore conditions of purchase, negotiation and delivery to non-veterans are inevitably altered from those applicable or existing with respect to sales to Veterans.

If neither the executive nor the judiciary takes cognizance of such considerations then the veterans-assistance legislative acts will have been defeated or undermined in the ultimate and will cease to be valid. To proffer them to a civilian army with the expectation that they will bear a favorable psychological effect may have little or no or even a sharp derogatory effect in the future. If the judiciary is to support the negative nonfeasance, misfeasance and malfeasance of the exe-

cutive branch of the government in veteran's matters covered by legislation, then will not such attitude and such action set the record for all future defenders of the flag to hiss and deride when certain offerings and material encouragements are made in the name of a grateful or erstwhile grateful people as being just so much baloney.

In this matter is the petitioner the only affected party? Most certainly not. I am just the first veteran (with respect to the subject matter) to take the trouble in hand and fight. There are a million veterans who were stationed in the Philippines, not to mention the Pacific and Asian Theatre, who know how the veterans were ignored in their veteran's priority in the purchase of surplus property and how the American bureaucrats inevitably worked out deals with Chinese millionaires, Filipino politicians and then finally with a giveaway to the Philippines, all detrimental to United States veterans, and in gross and culpable breach of the law giving priority in the purchase of surplus properties to United States veterans of World War II. Laws favoring veterans are to a major extent considered by the major part of the veterans as nothing more than lip service laws as is evidenced by the enthusiasm of the United State-

in carrying out the provision of the Surplus Property Act of 1944, such as, Contract W-ANL(PA-I)6758, subject of the case at bar.

III. The case involves a novel and important question of interpretation of two acts of Congress.

Did Congress actually grant rights or priorities to veterans of World War II? If it did, was not the United States Government compelled to sell surplus property to a veteran and if surplus property was sold and a contract executed was not the United States Government compelled by law, in addition to the contract, to make delivery by one means or another out of all the surplus property of World War II that was disposed of by the United States Government? Does not a veteran's priority negotiated contract live on until completed? Can such a contract be less subsisting than the law, or do we now have a question of the prescription of the law granting veteran's rights after the purpose for which it was written, and the rights and priorities involved, are forgotten? Does not the veteran's priority extend forever until retracted by subsequent law? Does not the petitioner's veteran's priority extend over every surplus portable sawmill in the Philippines after

World War II, even the Pacific Theatre or the entire world for that matter?

Are the rights granted to Veterans of World War II by the Surplus Property Act of 1944 superficial or absolute, serious provisions or window dressing, or can it be summed up as being only one aspect of our psychological warfare?

If such rights or preferences did exist, having not prescribed by some executive administrative trickery, can these rights be supplanted, deferred or avoided by the executive and the judiciary by inserting or allowing to be inserted conditions, circumstances and situations which have the effect of cancelling or putting aside those veteran's rights and priorities, or the surplus property which they command and to which they are to be applied.

Most important of all is the question of where fact begins and law ends or vice versa, or where one merge into the other, or which controls or supersedes the other, or when one has priority over the other. In the Surplus Property Act of 1944, Article No. 25 reads as follows:

"TITLE OF PURCHASER

"A deed, bill of sale, lease or other instrument executed by or on behalf of any Gov-

ernment agency purporting to transfer title or any other interest in property under this Act shall be *conclusive evidence of compliance with the provisions of this Act, insofar as title or other interest of any bonafide purchaser for value*, or lessees, as the case may be, *is concerned.*" (Italics Petitioner's.)

Since a deed of sale, or legal instrument, has already been executed by the Foreign Liquidation Commission transferring title of the subject saw-mill to the Petitioner and is admitted by the United States in its answer to the Petition in Court of Claims 442-52, this is, as stated by the Surplus Property Act of 1944 'conclusive evidence of compliance with the provisions of this Act, insofar as title or other interest of any bonafide purchaser for value, xxxx is concerned." Could this mean anything else but that all the conditions of the sale and purchase are proper, in order, feasible, possible and incontrovertible, particularly that the property sold is available and is ready for delivery.

In the face of absolute law, as quoted above, which decrees that the execution of a Deed of Sale by the Government agency is "conclusive evidence" of the existence or the potential existence or the

availability or the potential availability of the property sold, can the said Government agency or the judiciary now question the "availability or existence or potential existence or potential availability" of the property covered by the Deed of Sale given the petitioner transferring title to said petitioner? Possibly yes before the Deed of Sale is executed and delivered to the Petitioner, but by virtue of the Surplus Property Act of 1944, which is the legislation upon which the subject Veteran's Priority-Negotiated-Sale was made to the Petitioner-Veteran, it is legally impossible to do so after the Government Agency has executed and delivered to the purchaser the instrument conveying title.

Though the property sold did in fact exist and or was available, going to the extreme for the sake of argument only, if under the same circumstances an item of property did not actually exist and the Deed of Sale transferring title had been executed and delivered and such transaction is also governed and authorized by the Surplus Property Act of 1944 and is controlled by Section 25 quoted above, then does the mandamus of the law as to "conclusive evidence" control over actual fact or does actual fact defeat the clear

edict of the law? Or in case doubt exists, which is controlling, factual evidence or the stipulation of the law? Or, in view of the law, Sec. 25, Surplus Property Act of 1944, can a question of fact be raised at all in an attempt to supersede the provisions of law? Or is the said law wiser than one ordinarily tends to allow and has it actually foreseen such controversies and in order to protect the public against the vagaries and bureaucratic self-interest of Government agencies precluded by law any legal possibility of said Government agency, and consequently the judiciary, from breaking out of obligations duly and legally incurred.

IV. Failure to take jurisdiction and render a decision upon the merits amounts to taking of property without due process of law, contrary to the Constitution.

The decision of the Court of Claims ignores completely the fact that legal delivery of the subject sawmill had been completed.

(1) By the terms of the contract the property was sold where is, as is, thus the act of physical delivery is completed upon the execution of the contract, with only the safeguarding of the property as the remaining obligation of the United States until the Petitioner took possession of said property.

(2) The United States and the Petitioner acknowledged that delivery had been completed and possession taken by the petitioner by both parties signing the Vendor's Shipping Document, thus proving by acts of both parties to the contract that the property existed was available and that there was a taking of property when the United States Army retook repeat RETOOK possession of the subject property and refused to allow the Petitioner to take his sawmill off United States real estate.

(3) Petitioner had and has every right to just compensation for the use of his sawmill upon an implied contract to pay petitioner for the use of his sawmill or under the guarantees of the Fifth Amendment of the Constitution of the United States.

(4) The United States Army forwarded Petitioner's claim to the United States State Department. The United States State Department denied Petitioner's claim, and the General Accounting Office did not answer Petitioner's claim before the ultimate time for filing of Petitioner's claim in the Court of Claims in August, 1952.

(5) Petitioner's claim is timely filed in the Court of Claims.

V. Failure to take jurisdiction and render a decision upon the merits amounts to the toleration of a breach of the law protecting the legal rights of veterans and particularly their preferences, priorities, privileges and rights created for them by acts of Congress.

(1) In spite of the character of this Veteran's Priority-Negotiated-Sale and the edict of the Surplus Property Act of 1944 and the Servicemen's Readjustment Act of 1944, the United States Army and the United States Foreign Liquidation Commission gave Petitioner's sawmill to the Philippine Government as well as several dozen other surplus portable sawmill in gross contravention of said laws.

(2) Stipulation No. Eight of Contract W-ANL (PA-I) 6758 selling a portable sawmill to the petitioner reads as follows:

> ARTICLE ELEVEN. *Veteran's Priority.* — Notwithstanding any other provision of this contract, it is mutually understood and agreed that this sale is made upon the express condition that the property hereby transferred is transferred from the Seller to the Buyer for the "personal use," as that term is ordinarily used, of the Buyer, or to enable the Buyer to establish and maintain his own business, including professional and agricultural enterprises but excluding any business

involving the re-sale of the property acquired under this instrument."

which contract provision was ignored by the United States Army, the United States Foreign Liquidation Commission, the General Accounting Office, and the United States Court of Claims thus overlooking completely the incentive and the purpose for the petitioner to execute the subject contract of sale. Because the Petitioner is prevented by law, Surplus Property Act of 1944, and by Stipulation Eleven of Contract W-ANL(PA-I)6758 from reselling the sawmill, purchased with his veteran's priority, and is also compelled to operate it in his own sawmill business by the same law and the same contract, and is so compelled by the defendant the United States itself, then the only measure of damages would be the earnings that the Petitioner would have made from the use of the sawmill, i.e. value in actual use. This is so because Petitioner is bound by law and contract to this particular course. The United States wrote the law and the contract and thus verily new that such damages would ensue upon breach of contract or taking of property for use by the government. And by the said Contract, Stipulation Eleven, the United States has in effect contracted away its

Constitutional Right of Eminent Domain. Though it might 'take' Petitioner's sawmill subsequent to the sale by the United States, it could only be taken with the understanding of Stipulation Eleven Contract W-ANL(PA-I)6758 that the Government would pay for its use and/or that the inherent increment of property in Petitioner's particular sawmill, i.e. the earnings that would normally naturally, obviously and probably accrue to Petitioner from the operation of his Veteran's Priority Sawmill would be reimbursed to him by the United States. That such a state would exist until the United States' need for Petitioner's sawmill had expired, at which time, the sawmill would be returned to the Petitioner for his 'continued personal use' in his Veteran's Priority business' in accordance with the Surplus Property Act of 1944 and the precise Stipulation Eleven of Contract W-ANL (PA-I)6758. That is why the Court of Claims declaration that the measure of damages is the difference between the market value of the sawmill and the sales value at the time of breach or taking is utterly erroneous because it is based upon the presumption that the Petitioner has the right to resell the sawmill, that he would be in the business of buying and selling property, and also upon the 'usual' right of the United States to

repurchase said sawmill under Eminent Domain. This of course is impossible and inapplicable under the circumstances of the subject cause, because the United States, in this particular case, and under the special conditions surrounding the relationship of Government-Veteran-War Surplus Property-Surplus Property Act of 1944-Veteran's Priority-and-Government Veteran Proprietary Contract has legislated and contracted against the repurchase of the sawmill by itself, and against the resale of the sawmill by the Petitioner, and against the Petitioner's using the sawmill in any other manner but for his own personal business. Though this is an unusual situation, nevertheless, the law, the contract, the facts, the circumstances of Veterans of World War II vis a vis the United States have actually brought this precise situation about, and the Petitioner has suffered damages accordingly and therefore pleads accordingly. It is doubtful that there has ever been a case against the Government wherein the United States has precisely legislated and contracted to preclude any damages except the earnings from the use of Petitioner's sawmill by the United States or from Petitioner's inability to use his sawmill as required by Contract W-ANL (PA-I)6758, Stipulation Eleven.

(3) The Servicemen's Readjustment Act of 1944 provided for assisting the Veterans of World War II to reestablish themselves in civilian life by granting various rights, priorities, preferences and/or privileges for the attainment of this objective but the United States through its agencies, the United States Army and the Office of the Foreign Liquidation Commission sabotaged the Petitioner in his endeavor in behalf of his personal reestablishmentarianism by preventing him from gaining his just and chosen place in business by culpably breaking the laws cited above, in depriving him of the property he purchased and paid for under his veteran's priority, and by giving free gratis his sawmill together with dozens of other surplus portable sawmills to a foreign government in gross contravention of said public laws.

Failure to take jurisdiction will throw the additional weight of the judiciary behind the illegal acts of the executive.

VI. The case involves a serious breach of judicial procedure and the rules of the United States Court of Claims tantamount to depriving the petitioner of his Constitutional right to due process of law.

(1) The United States filed its answer to the Petitioner's complaint several months out of time.

(2) The United States is estopped by the Rules of the Court of Claims from pleading or attempting to set up a defense subsequent to the responsive pleading, most particularly, petition and answer. The United States did not set up or plead in its answer nonavailability of subject matter; or any similar affirmative defense, but did so only in a cross motion for Summary Judgment (though of course there is no true or justifiable defense to set up).

(3) The Court of Claims included in its decision, subject of this petition for certiorari, statements with respect to allowable damages which have not been pleaded or brought before the court for decision, for the order upon which this certiorari is sought stems from a motion for Summary Judgment on the issue of liability only and nothing more.

To allow this to stand and become final is in effect depriving the Petitioner of due process of law, for the Petitioner has not yet pleaded this matter nor had an opportunity to do so since the matter of liability has not yet been resolved.

The ascertainment of due process is a judicial function. (Monongahela Nav. Co. v. United States, 148 U.S. 312; Seaboard Air Line R. Co. v. United States, 261 U.S. 299; Brooks-Scanlon Corp. v.

United States, 265 U.S. 106; Richmond Screw Anchor Co. v. United States, 275 U.S. 331).

The Court of Claims exceeded and or avoided its due processes by inserting considerations of damages, such as how much and how it should be computed or arrived at, in its decision with regard to the Motion for Summary Judgment on the issue of "liability" only.

Since the Petitioner purchased the subject sawmill to engage in the production and marketing of lumber pursuant to the obligations and restrictions for veterans in the Surplus Property Act of 1944 and Stipulation Eleven of Contract W-ANL (PA-I)6758, it is impossible and illegal to compute damages except as allowed by said contract and said law. Both the contract and the law prohibits the Petitioner from reselling the sawmill purchased and thereby making a profit on the resale and precisely limits and confines the Petitioner to profits from the use of the subject sawmill in business. Thus the only damages that Petitioner could suffer would be those that could legally and possibly exist by virtue of the Surplus Property Act of 1944 and Contract W-ANL(PA-I) 6758, Stipulation Eleven.

This principle and this position is supported by the following Federal cases:

"Government occupying land without obtaining lease is liable for value of use and occupation Mack Copper Co. v. U.S. 1927, 63 Ct. Cl. 562."

"Where the United States had possession of land from the date of taking until date of verdict in condemnation proceedings landowners were entitled to just compensation suffered during the period. U.S. v. Sixty-two Parcels of Land in New Castle County, D.C. Del. 1938, 22 F. Supp. 540."

"Present entry on reservoir and dam and use of benefits without paying just compensation gives rise to cause of action for value of use and proportionate cost of maintenance and operation. Twin Falls Canal Co. v. American Falls Reservoir District No. 2, D.C. Idaho 1930, 45 F. 2d. 649."

"When the government enters upon private property as such its does so with the intent under its constitutional obligation of paying for its use and occupation and, conversely, when the owner assents to the occupancy by not bringing ejectment against the officer he acquiesces with the expectation of receiving

a reasonable rent. Clifford v. U.S. 1899, 34 Ct. Cl. 233."

"When the Government has entered upon the realty of a citizen, on his right of property being established, the government should be deemed to have entered as his tenant under an implied lease, whereof the "just compensation" secured by the Constitution to those whose property is taken for public use should be the rent. Johnson v. U.S. 1868, 4 Ct. Cl. 248,250."

"Where the owner of a hay press offered to sell it, and the officer subsequently put the machine to use in the government's service, it must be considered as property taken for public use, and the owner may recover its reasonable value, and cannot be required to take back the machine and accept compensation for its use. Peck v. U.S. 1878, 14 Ct. Cl. 84,85, modified on other grounds, and affirmed, 102, U.S. 64, 26 L. ed. 46."

"Where the government sells land by treaty or otherwise, and parts with the fee by patent without reservation, it retains no right to take that land for public use without just com-

pensation, and it is not necessary that there be an absolute taking or conversion of real property to the use of the public to bring the government within the operation of the constitutional rule. Impairing its value or its total destruction will render the government liable. Johnson v. U.S. 1872, 8 Ct. Cl. 244."

"Property is "taken" in the constitutional sense when inroads are made on an owner's use of it to an extent that as between private persons a servitude would have been acquired either by agreement or in the course of time. U.S. v. Dickenson, West Virginia, 1947, 67 S. Ct. 1382."

"Where at the time of the taking of plaintiff's vessel under Act June 15, 1917, 40 Stat. 182, there was a market, higher by reason of existing war than pre-war rates, for the use of such vessel, the plaintiff is entitled to just compensation based upon the value to which it could be put by plaintiff, and not upon the value to the government for the particular uses to which it is to be put, and the value of its use to the plaintiff must be determined by the evidence submitted of such market

value at the time it was taken. Hudson Navigation Co. v. U.S. 1922, 57 Ct. Cl. 411."

"Here the act involves an actual interference with, or disturbance of, property rights, as distinguished from injuries which are merely consequential or incidental and as distinguished further from trivial or insignificant takings or interferences, it is not necessary, in order to render a statute vulnerable from a constitutional viewpoint, that it in terms or in effect authorized an actual physical taking of the property or the thing itself, so long as it affects its free use and enjoyment or the power of disposition at the will of the owner Forster v. Scott, 136 N.Y. 577, 32 N.E. 976, 18 L.R.A. 543; People v. O'Brien, III N.Y. I, 18 N.E. 692, 2 L.R.A. 255, 7 Am. St. Rep. 684."

"An owner cannot be deprived of any of the essential attributes which belong to the right of property, such as use, enjoyment, purchase, mortgage, and sale; in fact, any contract in relation thereto. He cannot be deprived of the increment of property, or the increment of proceeds into which property has been converted. The right protected is an

attribute of property existing through the application of common-law principles. Chicago, R.I. & P. RR Co. v. U.S., 284 U.S. 80, 76 L. ed. 177, 52 S. Ct. 87; Henkels v. Sutherland, 271 U.S. 298, 70 L. ed. 953, 46 S. Ct. 524, 51 A.L.R. 229."

"Another statement of the rule is that the measure of damages for the breach of a contract is the amount which would have been received if the contract had been kept, which means the value of the contract including the profits and advantages which are its direct results and fruits. U.S. v. Wyckoff Pipe & Cresoting Co. 271 U.S. 70 L. ed. 938, 46 S. Ct. 503; Kentucky-Paducah Lumber Co. v. Paducah Water Supply Co. 89 Ky. 340, 12 S.W. 554, 13 S.W. 249, 7 L.R.A. 77, Am. St. Rep. 536."

The Petitioner had already made arrangements to enter the lumber business and was dependent upon the sawmill purchased from the United States under Contract W-ANL(PA-I)6758 to attain his objective and the objective of the Servicemen's Readjustment Act of 1944. The United States verily new the damages that the Petitioner would suffer, by virtue of stipulation eleven of said con-

tract, from the inability to make use and obtain earnings from the sawmill that he had purchased. The United States is legislatively and contractually and morally bound to place the injured Petitioner in as good a financial position as that in which he would have been and would be if the United States had not breached the subject contract and/or took Petitioner's sawmill and that the ultimate consideration of damages is not the 'taker's gain' but the 'injured veteran's loss.'

Stipulation Eleven of Contract W-ANL(PA-I) 6748 reads as follows:

> "ARTICLE ELEVEN. *Veteran's Priority.* — Notwithstanding any other provision of this contract, it is mutually understood and agreed that this sale is made upon the express condition that the property hereby transferred is transferred from the Seller to the Buyer for the "personal use," as that term is ordinarily used, of the Buyer, or to enable the Buyer to establish and maintain his own business, including professional and agricultural enterprises but excluding any business involving the re-sale of the property acquired under this instrument."

The Court cannot possibly admit of the conclusion of the Court of Claims either as to liability or as to its statements on damages which have not yet been pleaded and given due process, and which are utterly erroneous and inapplicable to the subject cause. The Court cannot possibly conclude otherwise than the United States is liable for breach of contract and/or taking of property and that the damages suffered by Petitioner would be the earnings of his sawmill in business.

CONCLUSION.

For the foregoing reasons and for the guidance of all parties concerned in future times of national stress or of war when large numbers of civilians take up the defense of their homeland, it is respectfully submitted that this petition for a writ of certiorari should be granted.

April 8, 1958.

M. MEADS
Petitioner

APPENDIX A

VETERAN'S PRIORITY SALE
(Individuals or Corporations)

No. W-ANL(PA-I)6758

NEGOTIATED

SALES CONTRACT

This agreement made and entered into this 13th day of August 1946, by and between the United States of America, hereinafter called "Seller," acting through the Field Commissioner, Philippines and Western Pacific Area, Office of the Foreign Liquidation Commissioner, and pursuant to the Surplus Property Act of 1944, and M. MEADS hereinafter called "Buyer," witnesseth that.

The parties do hereby mutually agree as follows:

ARTICLE ONE. *Property Sold.* — The Seller agrees to and does hereby sell to the Buyer, and the Buyer agrees to and does hereby purchase from the Seller the items of property listed on the Vendor's Shipping Document attached hereto as a part hereof.

ARTICLE TWO. *Sale of Property "As Is".* — The property sold on the attached Vendor's Shipping Document is sold "as is" and the Seller makes no guaranty, warranty, or representation, express or implied, other than warranty as to title.

ARTICLE THREE. *Title.* — Title to the property hereby sold shall pass from the Seller to the Buyer upon the execution and delivery of this contract.

ARTICLE FOUR. *Delivery.* — The property shown on the attached Vendor's Shipping Document is sold "where is", and delivery thereof shall take place at its present location with fifteen (15) days after the execution and delivery of this contract. The removal of such property shall be accomplished by the Buyer at the Buyer's expense, and unless the Buyer removes the property within the aforesaid fifteen (15) day period, all risk and responsibility for the care, custody and maintenance of the property shall be the Buyer's, and the Seller may, without notice:

a. Dispose of the property and hold the Buyer responsible for any loss incurred or damage suffered by the Seller as a result of the failure to remove the property; or

b. Store the property at its present location; or

c. Remove and store the property for, in the name of, and for the account and at the risk of the Buyer, and the cost of removal shall be paid by the Buyer to the Seller and shall constitute a lien on the property, and the cost of storage shall constitute a lien on the property in favor of the Seller or other person, firm, partnership, or corporation undertaking the storage of the property.

ARTICLE FIVE. *Purchase Price and Terms of Payment.* — The purchase price shall be ONE THOUSAND FOUR HUNDRED FIVE AND 65/100 DOLLARS ($1,405.65), currency of UNITED STATES and payment shall be made by the Buyer concurrently with the execution of this sales contract.

ARTICLE SIX. *Transportation, Taxes, Customs duties, Cost of Charges.* The Buyer will furnish and pay for all transportation necessary for the removal of the property, and further agrees to pay in addition to the purchase price, any taxes, customs duties, costs or charges of any kind or nature whatsoever levied, or to be levied in connection with the sale of the property.

ARTICLE SEVEN. *Agreement not to import into the United States.* — The Buyer agrees that if any property purchased under this agreement was originally produced in the United States and is readily identifiable as such, it will not be imported into the United States in the same or substantially the same form in which it was purchased; provided however, that such property may be imported (a) on consignment to a person or firm in the United States for the purpose of reconditioning for re-export or (b) by a veteran (including a member of the Armed Forces) abroad if brought in by the original purchaser for his personal use, and upon certification by the importer to the Treasury Department that the importation is being made for one of such purposes.

ARTICLE EIGHT. *Adjustment for Variation in Quantity.* — Unless otherwise specified, the quantities of the various items listed are approximate only. Any variations between the quantity stated for any item sold on a per item basis and the quantity of such item actually delivered to the Buyer will be adjusted on the basis of the unit price quoted for such item or items.

ARTICLE NINE. This contract shall be interpreted in accordance with the laws of the District of Columbia, United States of America.

ARTICLE TEN. No member of or delegate to the Congress of the United States or Resident

Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

ARTICLE ELEVEN. *Veteran's Priority.* — Notwithstanding any other provision of this contract, it is mutually understood and agreed that this sale is made upon the express condition that the property hereby transferred is transferred from the Seller to the Buyer for the "personal use," as that term is ordinarily used, of the Buyer, or to enable the Buyer to establish and maintain his own business, including professional and agricultural enterprises but excluding any business involving the re-sale of the property acquired under this instrument.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the date first above written.

FOR THE FIELD COMMISSIONER, PHILIPPINES AND WESTERN PACIFIC AREA:

By:

J. PRIOR

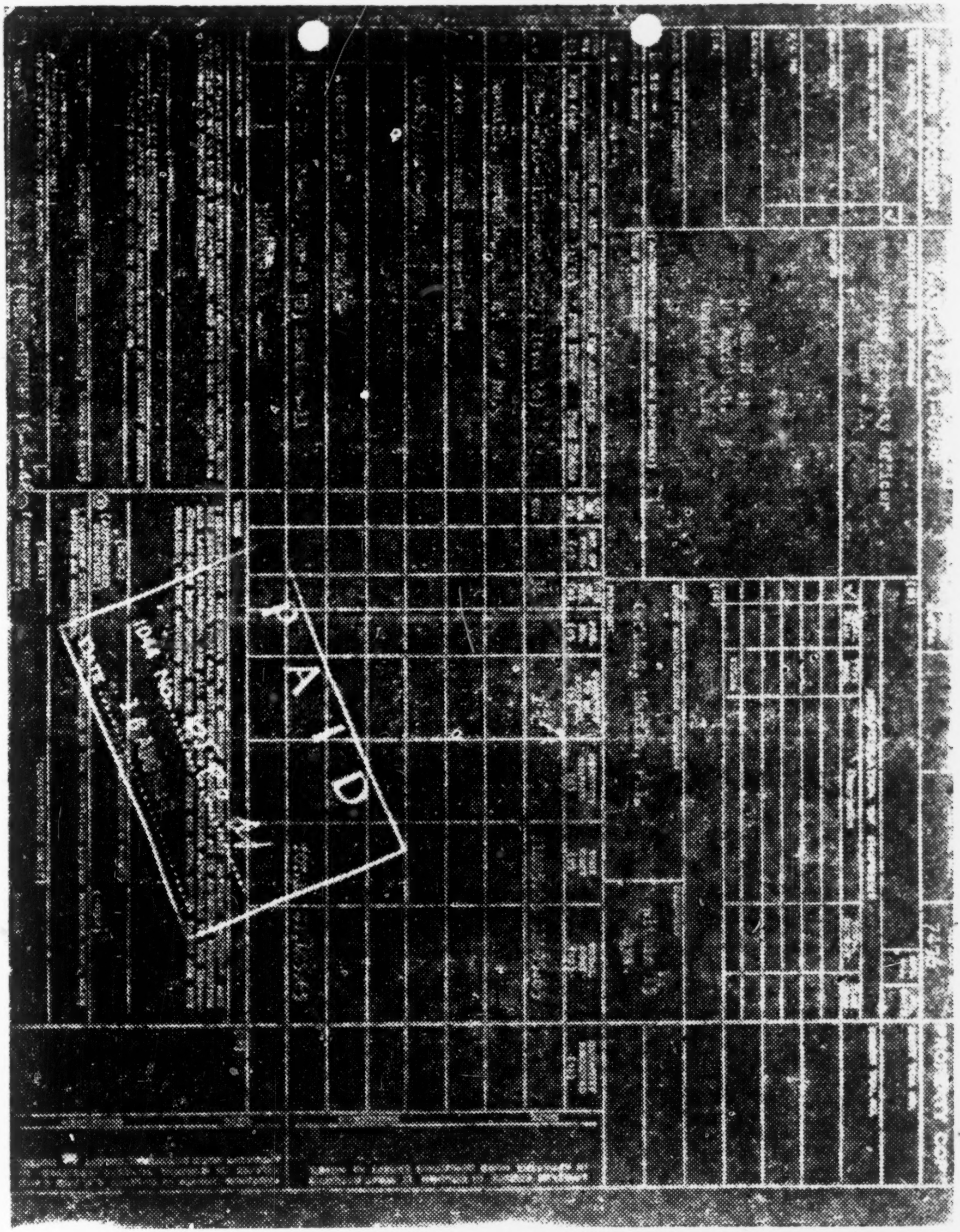
By:

M. MEADS

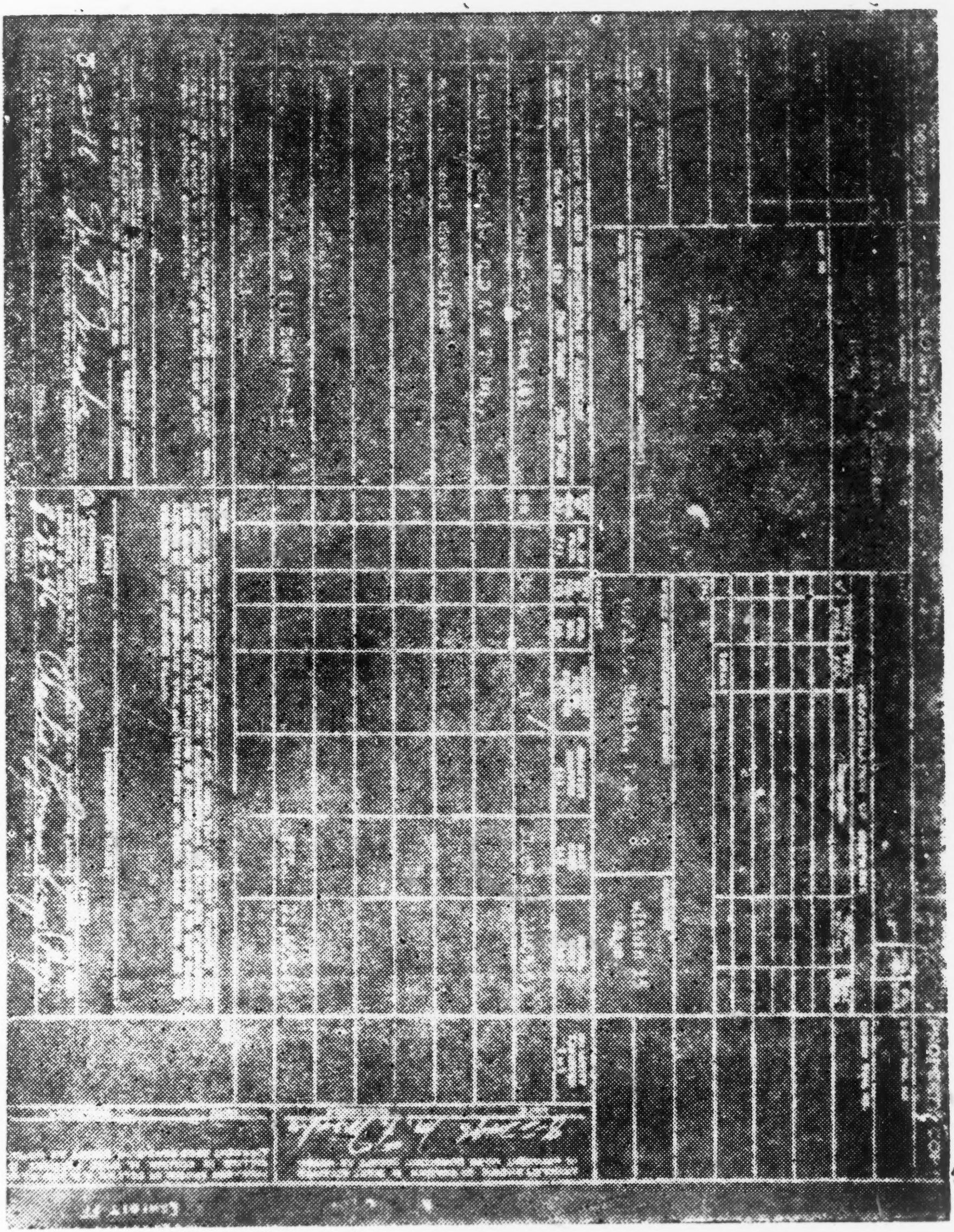
WITNESSES:

A. E. KOEHLER

J. DAVES



APPENDIX "A-1"



APPENDIX "B"

APPENDIX C

Surplus Property Act of 1944 (58 Stat. Pub. Law. 457, 764, 772) Sec. 16

DISPOSITIONS TO VETERANS

Section 16. The Board shall prescribe regulations to effectuate the objective of this Act to aid veterans TO ESTABLISH AND MAINTAIN THEIR OWN SMALL BUSINESS, PROFESSIONAL, OR AGRICULTURAL ENTERPRISES, BY AFFORDING VETERANS SUITABLE PREFERENCES TO THE EXTENT FEASIBLE AND CONSISTENT WITH THE POLICIES OF THIS Act in the acquisition of the types of surplus property useful in such enterprises.

" x x x."

TITLE OF PURCHASER

Section 25. A deed, bill of sale, lease, or other instrument executed by or on behalf of any Government agency purporting to transfer title or any other interest in property under this Act shall be conclusive evidence of compliance with the provisions of this Act, insofar as title, or other interest of any bona fide purchaser for value, or lessees, as the case may be, is concerned.

Section 1491 Judicial Code, 28 USCA 1491.

Section 1491. Claims against United States generally.

The Court of claims shall have jurisdiction to render judgment upon any claim against the United States:

(1) Founded upon the Constitution; or

(2) Founded upon any Act of Congress; or

(3) Founded upon any regulation of any executive department; or

(4) Founded upon any express or implied contract with the United States; or

(5) For Liquidated or unliquidated damages in cases not sounding in tort. June 25, 1948, c. 646, 62 Stat. 940.

APPENDIX D

Rules of the United States Court of Claims, Rule 15(c) and 16(h), as revised May 15, 1951.

Rule 15. Defenses

(c) Effect of Failure to Deny: Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

Rule 16. Defenses and Objections: When and How Presented

(b) How Presented: Every defense, in law or fact, to a claim for relief in any pleading, whether a petition, counterclaim, or third-party petition, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction of the subject matter or the person, and (2) failure to state a claim upon which relief can be granted. x x x.

APPENDIX E

AFFIDAVIT

Plaintiff's
Exhibit JJ

KNOW ALL MEN BY THESE PRESENTS that I, MORTON F. MEADS, of legal age, American citizen, single, resident of Manila, Philippines hereby swear and affirm:

1. That the papers attached hereto as plaintiff's exhibits KK and LL are true copies; of exhibit KK the original; of exhibit LL the carbon copy.

2. That Arnold Koppelman was the Surplus Property Officer in the Depot proper and Guy L. Stennett and Charlie Hyman were Surplus Property Officers or Surplus Disposal Officers or Surplus Property Disposal Officers or Property Disposal Officers in the Engineer Headquarters Office at the Depot.

3. That Guy L. Stennett was the successor of Charlie Hyman and handled the papers on Vendor's Shipping Document, Invoice 7496 after August 22, 1946, the date when the affiant first attempted to remove his sawmill from the land of the U.S. Army.

4. There were between ten and fifteen copies of the Vendor's Shipping Document, Invoice No. 7496

that I know of and some of these were signed by the buyer, Morton F. Meads, and the Surplus Property Officer, Charlie Hyman, on August 22, 1946 when delivery of affiant's sawmill was almost completed, but which was stopped by the U.S. Army. Though the photostats of both the plaintiff and defendant in case 422-52 of the Vendor's Shipping Document. Invoice No. 7496 show said signatures, the duplication process of course does not show that these signatures are in ink upon said defendant's multi-copied Vendor's Shipping Document form, thus showing that these signatures were placed on the Vendor's Shipping Document subsequent to the multicopying of said form, which thus shows a joint action by plaintiff and defendant subsequent to August 16, 1946 when full payment was made and when the Vendor's Shipping Document, Invoice No. 7496 was prepared and multicopied.

5. That this joint action stated in five above was the signing for the acknowledgment of completion of delivery, however, after signing, the delivery was stopped, but the signatures nevertheless prove that delivery of the property sold to the affiant by the United States of America had reached the final stage before the affiant's sawmill was taken

by the United States Army without the consent of the affiant.

6. That affiant's affidavit dated March 3, 1957 and marked exhibit (O) contains additional details about the events on August 22, 1946 when the affiant attempted to remove his sawmill from the land of the U.S. Army and when Morton F. Meads and the Surplus Property Officer, Charlie Hyman, signed the Vendor's Shipping Documents acknowledging delivery to the affiant, prior to the taking of affiant's sawmill by the United States Army.

MORTON F. MEADS
Affiant

WITNESSETH:

Sworn to and Subscribed before me this 25th day of March, 1957, affiant exhibited to me his Residence Certificate No, A4716357 issued at Pasay-City, Rizal Province on February 27, 1957.

ARDALION M. GONZALEZ
Notary Public
My commission expires on
December 31, 1957

Doc. No. 53
Page No. 7
Book No. 7
Series of 1957.

AFFIDAVIT

KNOW ALL MEN BY THESE PRESENTS that I, MARIANO PASCUAL, of legal age, married, Filipino citizen, businessman, with office at 1020 Quezon Boulevard, Manila, Philippines do hereby swear and affirm:

1. That I personally know that a great many surplus portable sawmills were turned over to the Philippine Government by the United States Government after World War II.

2. That I personally purchased over ten surplus portable sawmills from 1946 to 1948 from the Philippine Government who received from the United States Army Surplus.

3. That I personally know that the Philippine Surplus Property Commission received a great many other portable sawmills, in surplus property turnovers from the U.S. Government's Foreign Liquidation Commission, which it sold to people other than myself.

Further, the affiant sayeth not.

MARIANO PASCUAL

Subscribed and sworn to before me this 26th day of February, 1957, affiant exhibiting to me

his Residence Certificate No. A0119472 issued at Manila on Jan. 1, 1957, Province of Rizal.

WITNESSETH:

F. San Jose

Mariano Masilang

Notary Public
My commission expires on
December 31, 1957

Doc. No. ———
Page No. ———
Book No. ———
Series of 1957.

AFFIDAVIT

KNOW ALL MEN BY THESE PRESENTS that I, PHILIP MONTFORT, of legal age, married, resident of Maria Christina, Sampaloc, Manila, Philippines hereby swear and affirm:

1. That I have read the affidavit made by Monico Olivar, a copy of which is attached to this affidavit and made an integral part hereof, and hereby state that it is true and correct in every detail, except however, that stipulations Nos. 2, 4, 28, 29, 30, 31, 32 and 40 therein do not apply to the undersigned and therefore I do not affirm said stipulations.

2. That I was one of the persons who accompanied M. Meads on the visits cited in the attached affidavit and as stated in stipulation No. 37.

3. That I know that Morton F. Meads has more than enough knowledge and experience with sawmills and lumber to operate a sawmill profitably under competitive conditions.

4. That after World War II, the armed forces of the United States of America had a tremendous amount of heavy equipment, supplies, merchandise and machinery of all kinds including many portable sawmills as surplus.

5. That in the latter part of 1947 the United States Government began to turn over all its surplus property in the Philippines to the Philippine Government.

6. That upon receiving millions of dollars worth of surplus property, the Philippine Government created its own 'Philippine Surplus Property Commission' to sell its newly acquired surplus property in the same manner as the Foreign Liquidation Commission was selling for the U.S. Government, but with preference to Filipinos.

7. That among the surplus property turned over by the U.S. Government to the Philippine Surplus Property Commission were many many portable sawmills.

8. That after World War II during 1946-1947, lumber was in great demand in the Philippines, so much so, that even until 1948 it was selling for as high as one peso (fifty American cents) per board foot creating one of the greatest money making opportunities that has ever existed in the Philippines.

9. That at the present time there is a lumber boom in the Philippines of staggering proportions.

10. That it was difficult for an American to buy surplus property from the Philippine Surplus Property Commission after it had received all the surplus property of the U.S. Government in the Philippines after World War II.

11. That it appeared to me that Chinese seemed to be treated more favorably by the Foreign Liquidation Commission than veterans, American or Filipino.

PHILIP MORTFORT

WITNESSETH:

Atty. Teresa Cowera

Sworn to and subscribed before me this 5th day of March, 1957, affiant exhibited to me his Residence Certificate No. A0223280, issued at Manila on 2-7-56, Province of Rizal.

(Sgd.) Illegible
Notary Public

My commission expires on
December 31, 1957

Doc. No. 37
Page No. 4
Book No. 7
Series of 1957.

AFFIDAVIT

KNOW ALL MEN BY THESE PRESENTS, that I, Monico Olivar, of legal age, married, with address of 1462 Rizal Avenue Extension, Manila, Philippines, Filipino citizen hereby swears and affirm:

1. That on Friday, August 9, 1946, I accompanied Mr. Morton F. Meads, also known as M. Meads, to the Foreign Liquidation Commission Office at City Hall, Manila, Philippines for the purpose of checking on sawmills for sale, inasmuch as M. Meads had indicated to me his intention of going into the lumber business.

2. That I accompanied M. Meads because of my intention of being the field manager for M. Meads in his proposed lumber business.

3. That in the Foreign Liquidation Commission Office, we were directed by the receptionist to the desk of an American civilian who was in charge of heavy equipment or engineering equipment, which includes sawmills.

4. That M. Meads made his inquiries as I sat opposite him directly in front of the desk of the salesman.

5. That upon the inquiry of M. Meads, the salesman said that a notice or declaration had recently reached him and he then examined his card index, apparently for additional information. That the salesman then extracted a card, and while looking at the card, stated that there was a sawmill for sale located at Engineer Depot No. 14, Base X, Manila and also stating the price.

6. That the salesman then inquired as to whether or not M. Meads was a veteran of World War II stating that since sawmills were in such great demand they were reserved for veterans only.

7. That M. Meads informed the Foreign Liquidation Commission salesman that he was a veteran of World War II and that he intended to establish a lumber business.

8. That the FLC salesman then stated that if he, M. Meads, did buy the sawmill he would have to sign a contract containing a clause binding the purchaser to use the sawmill in the operation of a lumber business and that he would be prohibited from reselling it.

9. That M. Meads agreed to that condition, thereupon the FLC salesman said that he would call the Base X Eng. Depot 14 to ascertain if

there had been any changes in the surplus property declaration covering the sawmill under negotiation and to verify the existence of the sawmill.

10. That this checking by the FLC salesman with the Army Depot was customary because other FLC salesmen whom I had contacted in regard to other surplus items that I personally was interested in purchasing followed the same procedure.

11. That after the FLC salesman completed his telephone call to Base X he informed us that the surplus property declaration was still in effect, that the sawmill was at Base X, Depot No. 14.

12. That the FLC salesman said that there were four sawmills declared surplus, that one had already been sold and that an individual could only purchase one sawmill as sawmills were in demand by other veterans.

12. That the FLC salesman, upon being told by M. Meads that he did want to inspect the sawmill, gave him a note, memorandum or pass to the Surplus Property Official at the Base X depot, which paper I read after leaving the Office of the Foreign Liquidation Commission.

13. That after leaving the FLC office, we went directly to Base X Engineer Depot No. 14 to inspect the sawmill being offered to M. Meads.

14. That at Base X Depot No. 14, we entered a building and M. Meads gave the note, memorandum or pass to a Surplus Property Official, named Hyman, who gave M. Meads a new paper, a base pass, and kept the note or memorandum from the FLC salesman, and then called a yardman to escort us to the sawmill being offered.

15. That the yardman then transported us in a jeep to a spot in the Base X depot about seventy five yards from the office and indicated the sawmill being offered for sale which was marked in paint "Eng-X-223 Item 16 which was the same numbers that were on the note or memorandum or pass given to M. Meads by the FLC salesman.

16. That we inspected the sawmill and found it complete and satisfactory for use.

17. That the yardman said that there were three additional sawmills on the same surplus property declaration, Eng-X-223 Item 16, as the one he had just showed to us but he said that one had been sold and that the other two were not as good as this one but that we could inspect them if we wanted to.

18. That M. Meads informed the yardman that he was going to buy that sawmill.

19. That we then returned to the Base X depot office and M. Meads told the Surplus Property Official there that he was going to the Foreign Liquidation Commission and complete the purchase of the sawmill that he had just inspected.

20. That on August 15, 1946, I returned to Base X depot with M. Meads at which time I again saw the sawmill in the depot marked "Eng-X-223 Item 16" and it was undisturbed in position, location and condition from when I had last seen it approximately one week previously.

21. That on our visit to Base X Depot No. 14 on August 15, 1946, M. Meads requested permission to use the paint and brush that the yardman had in his jeep to put his name on the sawmill to protect his prior interest and rights until he took delivery.

22. That the yardman interposed no objection, as M. Meads, in our presence, painted his name, M. Meads, four or five times in white paint in conspicuous locations on the sawmill that was already marked "Eng-X-223 Item 16".

23. That on August 22, 1946 I accompanied M. Meads to Base X depot 14 to take delivery of the said sawmill, which M. Meads informed me he

had purchased, at which time M. Meads took a Diamond T Truck and a 20 ton low bed trailer to the Base X Depot 14 for the purpose of completing delivery.

24. That with the truck and trailer adjacent to the sawmill marked Eng-x—223 Item 16, and which still had the name "M. Meads" marked thereon that M. Meads had placed upon it the time of his previous visit, and with the depot crane and Japanese war prisoners in the process of loading the sawmill under the direction of the yardman and with M. Meads having already signed the Vendor's Shipping Document for receipt of the sawmill, a jeep pulls up it this operation, an American officer alights and stops the loading, stating that the United States Army has changed its mind and isn't going to sell the sawmill.

25. That M. Meads showed the officers his deed of sale and contract and proof that he had paid and purchased that sawmill, but the officer told him that the Army has the sawmill and is going to keep it.

26. That M. Meads pointed out to the officer the identification on the Vendor's Shipping Document of Eng-x-223 Item 16 and the same identi-

fication on the sawmill, repeating that he, M. Meads, is already legally the owner of that sawmill.

27. That the officer seemed little interested and said that the Army has use for this sawmill and isn't going to declare any more as surplus, and excusing himself with "I have my orders" instructed the yardman not to deliver that sawmill to M. Meads and then he took off.

28. That M. Meads and the undersigned then returned to the Base X depot office and informed the Surplus Property Official named Hyman, who was a civilian, what had happened, complaining strenuously.

29. That the Surplus Property Officer then made a telephone call to an Army Officer and asked about the refusal of another officer to let M. Meads load his sawmill explaining that the sawmill has already been sold to, and paid for by M. Meads, which telephone conversation I observed with M. Meads by being at the desk of the Surplus Property Officer.

30. That after the completion of the said telephone call, the surplus Property Official then informed M. Meads that there wasn't anything he

could do about it personally because he is employed by the U.S. Army and that the Army Engineers want that sawmill for stock.

31. That after additional protestations by M. Meads, the Surplus Property Official suggested that he get the Foreign Liquidation Commission to intercede on his behalf with the Military and that if they don't finally make arrangements to deliver his sawmill to him that "he should sue" and further that "you already own the sawmill, I don't see how you can lose."

32. That on the 23rd of August, 1946, I accompanied M. Meads to the Office of the Foreign Liquidation Commission at City Hall, Manila, at which time the FLC salesman said that he would try to straighten the matter out so that M. Meads could get his sawmill.

33. That the Foreign Liquidation Commission salesman, on the FLC salesman spoken of in this affidavit is one and the same person throughout.

34. That the Surplus Property Official spoken of in this affidavit is one and the same person throughout.

35. That a sawmill of the size and type and condition of the one purchased by M. Meads from

the Foreign Liquidation Commission and which in the Base X depot is identified as Eng-X-223 Item 15 was worth over two hundred thousand pesos immediately after World War II and in August, 1946.

36. That to my knowledge M. Meads knows, understands, and is experienced with, sawmills and their operation and is more than competent enough to operate a lumber business under competitive conditions successfully and profitably.

37. That on the visit to the Foreign Liquidation Commission on August 9, 1946 and to the Base X depot 14 on August 15, 1946 there was one Filipino who accompanied M. Meads and myself and on August 22, 1946 there was two Filipinos who accompanied M. Meads and myself.

38. That after the United States Government began to turn over all its surplus property in the Philippines to the Philippine Government, many portable sawmills were included therein and that I know this because I have been in various U.S. Army depots prior to their transfer to the Philippine Government, have seen portable sawmills of the type sold to M. Meads and know of the Philippine Surplus Property Commission, the Philippine Government Agency created to dispose of the sur-

plus property turned over to the Philippine Government by the U.S. Government, selling these depots and the sawmills aforestated.

39. That the Philippine Government through its Philippine Surplus Property Commission sold many portable sawmills, of the type the U.S. Government sold to M. Meads, from the surplus property in Manila and vicinity that it received from the U.S. Government, the sale of which was often announced through Manila newspapers.

40. That sometime in November, 1948, I accompanied M. Meads to Engineer Sub-Depot No. 19, a few miles from the Office of the Foreign Liquidation Commission in Manila, to inspect another portable sawmill and that this sawmill was not similar to the one M. Meads purchased in depot No. 14 in make, model, type or condition.

41. That during the times that I accompanied M. Meads to the Foreign Liquidation Commission and to the U.S. Army Depots, there was no contact or business transacted with a man by the name of Stennett.

42. That the above statements are my own personal knowledge because of my being physically present at the time of the described happenings and therefore seeing, hearing, observing and wit-

nessing with my own eyes, ears and being the aforesaid events, statements, conversations, papers, documents, conditions, causes and effects.

43. That the obstinacy arrogance and arbitrariness of the U.S. Army in its holding the sawmill in Depot No. 14 from M. Meads and the negligence of the Foreign Liquidation Commission in its failure to insist upon compliance by the U.S. Army with the sale made by it are the causes of non-delivery of the subject sawmill to M. Meads. That I do not believe this to be merely an opinion but a composite fact drawn from all the other facts of this matter of which I know.

44. That I know and understand and read and write the English language better than any other language.

(Sgd.) M. OLIVAR
MONICO OLIVAR

WITNESSETH:
Roberto Santos

Sworn to and Subscribed before me this 27th day of February, 1957, affiant exhibited to me his Residence Certificate No. A4487862 issued at Caloocan on Jan. 7.

(Sgd.) ANDALION M. GONZALES
Notary Public
My commission expires on
December 31, 1957

EXHIBIT PP

AFFIDAVIT

KNOW ALL MEN BY THESE PRESENTS

that I, Francis R. Maher, Jr., of legal age, American citizen, married, resident of Quezon City, Philippines hereby swear and affirm:

1. That I have been a resident of the Philippines since 1946 after receiving my discharge from the United States Armed Forces in the Philippines.

2. That I have been in the Philippines continuously since said discharge in 1946 and that I personally dealt in surplus property of World War II of the United States in the Philippines after the end of that War, therefore I am fully well acquainted with surplus property and the conditions of its existence and the conditions of its disposal and of what surplus property existed in the Philippines.

3. That because of my dealings in surplus property of World War II in the Philippines I visited many United States Military Depots holding, storing exhibiting, offering, guarding, and delivering surplus property in 1946, 1947, 1948, etc.

4. That during the months of June, July, August, September and October, 1946 I did visit various U.S. Engineering Depots in Manila vicinity including Engineer Depot 14 during which visits I did see and recognize what is called surplus portable sawmills and that during said in-

spection-visits I was informed by officials and employees of these depots that said surplus portable sawmills were available for sale, were surplus property and were being disposed of (particularly to veterans of World War II).

5. That I am the Vice President of the Columbia Television Corporation, Chairman of the Board of the American Steel Windows, Inc.. Treasurer of the New Yorker Taxi and Vice President of the MacArthur Mining Company, Inc.

FRANCIS R. MAHER, JR.
Affiant

WITNESSETH:

(Sgd.) Illegible
Morton Meads

. . . . . .

Sworn to and Subscribed before me this 5th day of Feb., 1958, affiant exhibited to me his Residence Certificate No. A-0022977 issued at Manila, Philippines on Jan. 3, 1958.

ARDALION M. GONZALEZ
Notary Public
My commission expires on
December 31, 1959

ACR No. A-4443
8/4/50—Manila

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EXHIBIT WW

AFFIDAVIT

KNOW ALL MEN BY THESE PRESENTS that I, Charles MacCaffrey, of legal age, American citizen, resident of Mandaluyong, Rizal Province, Philippines, hereby swear and affirm:

1. That I have been a resident of the Philippines since 1946, as a serviceman in the United States Armed Forces until 1948 and as a civilian thereafter.

2. That during the years 1946, 1947, 1948 when I was a serviceman in the Armed Forces of the United States in the Philippines, I was personally faced with the surplus property of World War II constantly, no matter where I would go in the Philippines or the Manila vicinity, and I am therefore fully well acquainted with surplus property and the conditions of its existence and the conditions of its disposal and of what surplus property existed in the Philippines.

33. That because of my personal situation as a serviceman in the Philippines during 1946, 1947, 1948 I visited many United States Military Depots, holding, storing, exhibiting, offering, guarding, and delivering surplus property of World War II.

4. That during the months of July, August, September and October, 1946 I did visit various U.S. Engineering Depots in Manila vicinity including Engineer Depot 14 during which visits I did see and recognize what is called surplus portable sawmills and that during said inspection-visits I was informed by officials and employees of these depots that said surplus portable sawmills were available for sale, were surplus property and were being disposed of (particularly to veterans of World War II).

5. That I am the Service Manager for the Philippines for Koppel, Inc. (Philippines), Philippine Distribution of Caterpillar Tractors, and subsidiary of U.S. Industries, Inc. and am currently receiving annual earnings in excess of thirty thousand pesos. Prior to this position, I was employed by Marsman Trading Company, Ltd., Philippine distributor of Oliver Tractors and Farm Equipment, as Service Manager for the Philippines. Prior to this position, I was employed by Morrison-Kaudson Construction Company in its Philippine construction contracts. Prior to which I was a U.S. serviceman as stated above. That I am therefore thoroughly experienced with and

know and recognize all types of equipment and machinery, which includes portable sawmills.

CHARLES MacCAFFREY
Affiant

WITNESSETH:

Morton F. Meads

Sworn to and Subscribed before me this 10th day of February 1958, Affiant exhibited to me his Residence Certificate No. A-0165797 issued at Manila, Philippines on Jan. 14, 1958.

ARDALION M. GONZALEZ
Notary Public
My commission expires on
December 31, 1959

Doc. No. 28
Page No. 33
Book No. VII
Series of 1958.
ACR-A1774
7-17-18 — Manila

EXHIBIT RR

AFFIDAVIT

KNOW ALL MEN BY THESE PRESENTS that I, Ricardo Labrador, of legal age, Filipino citizen, resident of 82 España Extension, Quezon City, Philippines, hereby swear and affirm:

1. That after World War II, I obtained employment with the Philippine Surplus Property Commission, having the honor of being associated with the Technical Committee in that government agency, which employment I held continuously until that entity completed its assigned tāsk of taking custody of all the United States Surplus Property in the Philippines and disposing of same in any manner that it saw fit which was completed in 1949.

2. That during my employment in the said agency I did learn all aspects of the surplus property in the Philippines both with respect to the United States Foreign Liquidation Commission and the Philippine Surplus Property Commission, the processes and procedures of acquiring surplus property, prices, quantities, locations and the types of equipment existing and available.

3. That throughout the whole month of August, 1946, there were surplus portable sawmills in the depots of the United States Military in the Philippines available for sale and acquisition. That during this month the Philippine Procurement Commission could have purchased, and the Philippine Surplus Property Commission could have acquired, several surplus portable sawmills from the United States Foreign Liquidation Commission if those parties would have so desired.

4. That prior to and during, and on August 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 of August, 1946, as well as the entire month of August, 1946, there were surplus portable sawmills in the depots of the U.S. Military in the Philippines and available for sale and acquisition and that during this time, the Philippine Procurement Commission and the Philippine Surplus Property Commission acquired by purchase from the U.S. Foreign Liquidation Commission surplus portable sawmills.

5. That subsequent to August, 1946, there were surplus portable sawmills in the depots of the U.S. Military in the Philippines and available for sale and acquisition and that during this time the Philippine Surplus Property Commission acquired over one hundred surplus portable sawmills from the

U.S. Foreign Liquidation Commission most of which surplus portable sawmills it thereafter sold privately to Filipinos.

6. That between August 22, 1946, and September 30, 1946 the U.S. Foreign Liquidation Commission sold a surplus sawmill to a private Filipino citizen, and delivered same, at the request of the Philippine Government under Contract W-ANL-206 PC-40, which sawmill was available for sale and delivery to any other party and certainty an American citizen with veteran's priority, and which sawmill could have been delivered to M. Meads in August, 1946 as Contract W-ANL(PA-1) 6758.

7. That the United States Foreign Liquidation Commission gave surplus portable sawmills to the Philippines Surplus Property Commission from 1946 to 1949 and that some of the Vendor's Shipping Document surplus covering or including surplus portable sawmills between those times are as follows: 11068, 10912, 9833, 13123, 13109, 13001, 10002, 10042, 10236, 33798 etc., and that these surplus portable sawmills were given to the Philippine Surplus Property Commission without reimbursement and any one of these sawmills could have just as easily been delivered to M. Meads instead of the Philippine Surplus Property Com-

mission; and further that all of these sawmills were in the Philippines prior to and throughout the month of August, 1946, more surplus property, were scheduled for absolute complete and unequivocal disposal by the U.S. Military and the U.S. Foreign Liquidation Commission and were available for sale and acquisition to anyone who would make the right approach.

8. That if I would have desired to purchase a surplus portable sawmill, or any surplus portable sawmill that was eventually given to the Philippine Liquidation Commission, at anytime in 1946, I Surplus Property Commission by the U.S. Foreign could have done so by requesting the Philippine Procurement Commission or the Philippine Surplus Property Commission to intercede on my behalf with the Foreign Liquidation Commission and request that a particular surplus portable sawmill be sold to me. That this procedure was quite common specially for influential Filipinos and Congressmen. That the Foreign Liquidation Commission never failed to accommodate any Philippine Procurement Commission or Philippine Surplus Property Commission request for immediate sale and or delivery of any property that they wanted from U.S. Military depots in the Philippines. That all the U.S. Military property in the Philippines

before and during August, 1946 was surplus property and was eventually sold or given away as such. All was surplus and all was available if you made the right approach and/or if you were influential enough.

Further the affiant sayeth not.

RICARDO LABRADOR
Affiant

WITNESSETH:

(Sgd.) Illegible

Sworn to and Subscribed before me this sixth day of March, 1958, the affiant known to me, he having exhibited his Residence Certificate No. A-0214168, issued at Manila on January 30, 1958.

ARDALION M. GONZALEZ
Notary Public
My commission expires on
December 31, 1959

Doc. No. 49
Page No. 37
Book No. VII
Series of 1958.

EXHIBIT XX

AFFIDAVIT

KNOW ALL MEN BY THESE PRESENTS that I, ALFONSO YAMBAO, of legal age, Filipino citizen, resident of 1462 Rizal Avenue Extension, Caloocan, Rizal Province, Philippines, hereby swear and affirm:

1. That after World War II, I was employed with both the U.S. Army and the Philippine Surplus Commission and that during my employment in the said agencies I did learn all aspects of the surplus property in the U.S. Army, and in the Philippines both with respect to the United States Foreign Liquidation Commission and the Philippine Surplus Property Commission, the processes and procedures of acquiring surplus property, prices, quantities, locations and the types of equipment existing and available.

2. That the employment specified above was confined to a U.S. Army Engineer depot and subsequently a Philippine Surplus Property Commission depot, on the Island of Luzon, Philippines and the stated knowledge applies particularly to engineer equipment, or heavy equipment among which is the item 'sawmills.'

3. That during said employment and from April, 1946 to February, 1947 there was a surplus portable sawmill in said depot, that it had been declared surplus by the U.S. Army on the appropriate SPB-3 form together with other engineer equipment, and that during this entire time it was available as surplus property for sale and delivery.

4. That my fellow employees as well as myself always wondered why no one purchased the said surplus portable sawmill throughout all that time in view of the great demand and the very great value of any sawmill after World War II in view of the tremendous need for construction materials for rehabilitation purposes.

5. That the said surplus portable sawmill was finally turned over to the Philippine Surplus Property Commission together with millions of dollars worth of other engineer property in said depot which office sold the said sawmill to a private, individual Filipino citizen.

6. That attached to this affidavit are certified thrue copies of five documents from the files of the Philippine Surplus Property Commission.

ALFONSO YAMBAO
Affiant

WITNESSETH:

Luis de la Cruz

REPUBLIC OF THE PHILIPPINES)
IN THE CITY OF MANILA) S.S.

Sworn to and subscribed before me this 1st day of April, 1958, the affiant known to me and to me known to be the same person who executed the foregoing document, he having acknowledged that he has done so of his own free will and volition and having exhibited to me his Residence Certificate No. A-0353058 issued at Manila on 4-1-58.

ARDALION M. GONZALEZ
Notary Public
My commission expires
December 31, 1959

Doc. No. 69
Page No. 41
Book No. VII
Series of 1958.

APPENDIX F

Plaintiff's
Exhibit CC

HEADQUARTERS
ENGINEER SUB-DEPOT No. 14
PHIBCOM

APO 75
1 October 1946

SUBJECT: Failure to Deliver

TO: Commanding Officer
596th Engr. Base Depot
(Attn: Surplus Property Section)

The item on V.S.D. 7496 can not be delivered for the following reasons:

(a) Equipment that was segregated under Eng. X 223, Item 16 for circular Sawmill is reserved for our own use.

(b) We have only one Sawmill in H.E. Yard and the condition is fair.

For your Information.

ARNOLD KOPPELMAN
Surplus Property Officer

/asl

APPENDIX G

Plaintiff's
Exhibit E

HEADQUARTERS
ENGINEER BASE DEPOT PHIBCOM

GLS/apa

No. 203
SUBJECT: PASS TO ENTER DEPOT

TO: Commanding Officer
Sub-Depot No. 14
APO 75

9 Dec, 1946
Date Issued
9 Dec, 1946
Date of Expiration

1. Admit Mr. Meads and party of ——— for the purpose of examining items of Surplus Property identified below:

Agency No. Declaring	FLC No.	Item	Qty.	Price	Cond.	Description
7496						VSD 7496

2. Inspection will be limited to the property described above.

FOR THE COMMANDING OFFICER:

GUY L. STENNETT
Surplus Disposal Officer
Surplus Property Section

NOTE: Depot will pick up Pass Before Party leaves Depot.

APPENDIX H

Plaintiff's
Exhibit KK

HEADQUARTERS
ENGINEER DEPOT
PHIBCOM

/moc

APO 75

8-22-1946

* * Admit bearer Mr. Mead to Depot No. 14 for the purpose of removing his sawmill Surplus Property.

CHARLIE HYMAN
Surplus Disposal Officer

* * Supersedes all previous passes issued by Surplus Property Section, 9 July 1946.

APPENDIX I

Plaintiff's
Exhibit LL

HEADQUARTERS
ENGINEER SUB-DEPOT No. 14
PHIBCOM

CH/moc
APO 75

23 August 1946
(Date)

SUBJECT: Failure to Deliver.

TO: Commanding Officer,
596th Engr. Base Depot
(Attn: Surplus Property Section)

The item or items on V.S.D. No. 7496 can not be delivered for reasons indicated:

ITEM No.	SPB-3 No.	SHORT-AGE	CAUSE
———	ENGR-X-	——— *	: Stolen ——— : Issued ——— : Other ———
———	ENGR-X-223	one	: Stolen ——— : Issued ——— : Other ———

your office stopped delivery

——— ENGR-X- ——— : Stolen ———
: Issued ———
: Other ———

* Check one. If cause is other than stolen or issued, explain fully.

If heavy equipment issued, note Base X number on copy No. 10, attached VSD, before returning to Surplus Property Section.

FOR THE DEPOT COMMANDER:

ARNOLD KOPPELMAN
Surplus Property Officer

APPENDIX J

Plaintiff's
Exhibit H

JPP/GPM/rtj

DEPARTMENT OF STATE
FOREIGN LIQUIDATION COMMISSION
CENTRAL FIELD COMMISSION FOR
PACIFIC AND CHINA
City Hall Annex
Manila, P.I.
APO 707

July 21, 1947

In reply please
refer to R-2 MFLC

Mr. Morton F. Meads
18 David Street
Manila, Philippines

Dear Sir:

Your letter of protest to the Commissioner has been passed to this department for handling.

While our records do not indicate additional sawmill units as surplus you may rest assured that a determined effort is being made to secure this item.

You will be advised shortly the results of our attempts at securing merchandise for you.

Very truly yours,

JOHN P. PRIOR
Director
Movable Goods Divisicn

APPENDIX K

ADDITIONAL PROVISIONS

17. DELETIONS: Conditions No. 4 (Bid Guarantee), No. 5 (Payment), No. 8 (Adjustment for Verification in Quantity or Weight), and No. 15 (Disputes) are hereby deleted.

18. BID GUARANTEE AND LIQUIDATED DAMAGES: The bidder agrees that (1) the bid will not be withdrawn within the time specified for acceptance after the opening of bids (60 calendar days if no period be specified by the bidder), and will during that time remain firm and irrovacable, and that (2) the bidder will pay to the Government the purchase price of the property in accordance with the bid if accepted. If a bid deposit is required, the bid must be accompanied with said bid deposit. If after award the Purchaser fails to pay the balance of the purchase price, fails to remove the material, or otherwise fails to perform any of its obligations, he will thereby lose all right, title, and interest in the material hereunder, and the Government may, at its election, retain the material and may retain from any amount paid by the Purchaser, as liquidated damages, a sum equal to twenty percent (20%) of the purchase

price plus any accrued charges hereunder. The balance, if any, shall be remitted to the Purchaser.

19. PAYMENT: Payment of the balance of the purchase price, if a deposit has been made, or otherwise of the full purchase price, shall be made by cash, or by certified check, cashier's check, bank draft, postal or express money order, payable to the Treasurer of the United States, within five (5) days after notice of award. Payment of the full purchase price, subject to any adjustment for variation in quantity or weight pursuant to condition No. 20, must be made prior to the delivery and removal of any property. If any such adjustment is necessary, then payment must be completed, unless otherwise specified by the Government, immediately subsequent to adjustment.

20. ADJUSTMENT FOR VARIATION IN QUANTITY: Any variation between the quantity or weight listed for any item and the quantity or weight of such item tendered or delivered to the Purchaser will be adjusted on the basis of the unit price quoted for such items; but no adjustment for such variation will be made when an award is made on a "price for the lot" basis. When property is sold on a unit price basis, the Government reserves the right to vary the quan-

tity tendered or delivered up to the Purchaser by *zero* percent. If the Government tenders or delivers a quantity up to *zero* percent in excess of that stated in the Invitation to Bid, the Purchaser agrees to accept such quantity and pay the Government therefore at the unit price set forth in this contract. If the Government tenders or delivers a quantity less than that stated in the Invitation to Bid, the Purchaser agrees to accept the quantity tendered or delivered unless the variation exceeds *zero* percent of the quantity stated in the Invitation to Bid. In the event of a shortage the Government will refund to the Purchaser the difference between the quantity paid for and the quantity delivered, calculated upon the basis of the unit prices set forth in this contract.

21. LOADING: The Government agrees to lead f.o.b. carrier at U.S. Naval Station, Subic Bay, Philippines in carload or truckload lots and in one operation only unless the material sold hereunder is ordinarily shipped LCL; in the latter case the Government agrees to load f.o.b. carrier as the Purchaser's shipping orders may direct. Any expenses over and above these customarily required for loading f.o.b. whether it be carload or LCL, shall be for the account of the Purchaser.

STANDARD FORM 114A, REVISED
August 1950
Prescribed by General Services Administration
Personal Property Management
Regulation No. 3

SALE OF GOVERNMENT PROPERTY
INVITATION, BID, AND ACCEPTANCE
(Continuation Sheet)

PAGE NO. 6 | CONTRACT NO. B-13-56 | INVITATION NO. TO BE SUPPBLIED BY BIDDER

LOT NO.	DESCRIPTION AND LOCATION OF PROPERTY	QUANTITY (Number of Units)	UNIT OF MEASURE	PRICE BID PER UNIT	TOTAL PRICE BID PESOS	CENTS	VS
1	TAIL SECTION BARGE PROPELLING UNIT, Make: Murray Tregurtha Harbor Master, Mouel OA31, Serial No. NA. CONDITION: Unused, poor condition. LOCATION: Westside of Whse. No. 199	1	EA				
2	TAIL SECTION BARGE PROPELLING UNIT, Make: Murray & Tregurtha Harbor Master, Model OA31, Serial No. NA. CONDITION: Unused, poor condition. LOCATION: Westside of Whse. No. 199 in.	1	EA				
3	TAIL SECTION BARGE PROPELLING UNIT, Make: Murray & Tregurtha Harbor Master, Model OA31, Serial No. NA. CONDITION: Used, major repairs required, poor. LOCATION: Westside of Whse. No. 199	1	EA				
4	TAIL SECTION BARGE PROPELLING UNIT, Make: Murray & Tregurtha Harbor Master, Model OA31, Se-						
4	TAIL SECTION BARGE PROPELLING UNIT, Make: Murray & Tregurtha Harbor Master, Model OA31, Serial No. 2013. CONDITION: Used, major repairs required, poor. LOCATION: Westwide of Whse. No. 199.	1	EA				
5*	BARGE PONTOON, 5 x 12 Sections CONDITION: Used, usable, poor LOCATION: Inner basin.	1	EA				
6	*ALTERNATE BID.* This lot consists of all material listed and described in lots 1 thru 5. Award under this lot may be made only if the highest acceptable bid on this lot when multiplied by (the total number of unit in all lots) is equal to or greater than the total of highest acceptable bids on the individual lots 1 thru 5.						

*NOTE: Item 5 is availale for inspection at 1:00 P.M. on Tuesdays and Thursdays, between 3 August and 16 August 1955.

The material listed herein is being offered for sale inaccordance with Section 201 (c), Public Law 152, 81st Congress, Act of June 30, 1949 (63 Stat. 384).

CAUTION: INSPECT THE PROPERTY

NAME OF BIDDER

EACH SHEET OF BID SHOLD SHOW NAME OF BIDDER

APPENDIX L

H33/14-3/541
Sup. No. 1457
3 August 1950

Mr. Morton F. Meads
279 Samson Road
Grace Park, Caloocan
Rizal, Philippines

Dear Sir:

On 30 June 1950, a letter of notification of award with the original and one copy of Contract N61552s-97 signed by the Supply Officer was forwarded to you.

Under paragraphs one and four of the conditions and terms of the above Sales Contract, the Government may hold the contractor to be in default if the purchaser fails to pay the balance of the contract price, or to remove all material within the periods specified in paragraphs one and four thereof, or if the purchaser fails to carry out any of the other terms of the contract. In accordance therewith, notification of default by registered mail, return receipt requested is hereby given for failure ten days limitation specified therein.

An amount equal to one quarter of the contract price, in this instance three and 73/100 dollars

($3.73), is being retained from your deposit by the Government as liquidated damages. As contractor and purchaser you are further informed that you have lost any right, title, and interest therein, and in and to the material covered by the above contract.

Any monies held on deposit by the Government in excess of one-quarter of the contract price will be returned to you.

Very truly yours,

R. J. CERHARDT
LCDR, SC, U.S. Navy
Supply Officer

Copy to:

Disbursing Officer, Navy No. 3002

EXHIBIT XX-1

APPENDIX M

DEPARTMENT OF STATE
OFFICE OF THE FOREIGN LIQUIDATION COMMISSION
General Field Commissioner for Philippines
and Southern Pacific
AMERICAN CHANCERY AREA
Manila, P.I.

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cc: Mr. Ellison
4530
WFLC
SFLC
20 July 1948

In reply please
Refer to RFLC E-5-9

Mr. Arsenio Luz
Surplus Property Commission
City Hall Building
Manila, P.I.

Dear Mr. Luz,

We refer to Article I "Property Sold and Granted," of the Agreement between the United States and the Philippines from the Sale of Certain Surplus War Property dated as of September 2, 1946, which states:

"That these presents the United States sells and grants and the Philippines buys and accepts *all that property owned by the United States on the effective date hereof* but surplus to their needs in Philippine Islands ..... (Italics supplied by the writer.)

We have received some, and anticipate receiving additional, declarations form Owning Services of the U.S. military installations which states that the property declared surplus to their needs was not located in the Philippine Islands prior to, or at the time of, the effective date of the Sale Agreement, namely, September 2, 1946.

Upon receipt of these declarations, we requested information from our Washington Office as to the propriety of considering these declarations as not being included under the Sales Agreement, and hence available for open market sale by the F.L.C.

For your information and for the record, we state the policy of the Foreign Liquidation Commission in this respect:

The Agreement between the United States and the Philippines for the sale of Certain Surplus War Property does not include property delivered into this area (the Philippine

Islands) by Owning Agencies after the effective date (September 2, 1946) of the Agreement.

The intent of the signators of the Agreement was to include only property actually and physically located in this area as of the effective date of the Agreement.

Therefore, if this office receives declarations of surplus property which include a signed statement by the U.S. Owning Services that such property was not to the Philippine Islands on or infore September 2, 1946, or that such property was delivered into the Philippine Islands after September 2, 1946, we shall consider such property as not included is the Sales Agreement, and, in accordance which existing U.S. laws and procedures, dispose of such property in open market sales for the account of the United States of American.

Very truly yours,

(Sgd.) R. W. ELLISER
Director
General Disposals Div.

APPENDIX N

Plaintiff's Petition

"X X X."

XVIII

"That Exhibit 'A', Contract W-ANL (PA-I) 6758, was executed by the plaintiff and the United States of America on August 13, 1946 as is shown by Exhibit 'A', which is a certified true copy of the plaintiff's copy of the contract.

XIX

"That Exhibit 'A', Contract W-ANL (PA-I) 6758 was delivered to the plaintiff by the United States of America after the plaintiff paid the full purchase price of the sawmill to the United States of America on August 16, 1946 in Manila, Philippines.

"X X X."

Defendant's Answer

"X X X."

VIII

"Admits the allegations contained in paragraphs XVIII and XIX of the amended petition.

"X X X."